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Monday, April 24, 2006

4/14/2006 4:00:00 AM

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Law allows digging but not taking bones

Fate of grave-digging case now in county attorney's hands

By JOANNA DODDER

The Daily Courier

PRESCOTT The Prescott city prosecutor turned a case back to the Yavapai County Attorney's Office Thursday to investigate possible felony charges against men who dug up the remains of a man who claimed to be Billy the Kid.

City Prosecutor Glenn Savona concluded that it could have been legal for former Arizona Pioneers Home Superintendent Jeanine Dike to allow the men to dig up bodies at the Pioneers' Home Cemetery in Prescott for "reasons of internal management." It was legitimate for her to want to know who was buried there, he said in a letter to County Attorney Sheila Polk. The State of Arizona owns the home and cemetery in Prescott.

His conclusion rules out any misdemeanor charges, Savona said.

However, felony charges could result from taking body parts from the cemetery, Savona said. And felony charges are outside the city's jurisdiction, so that will be Polk's job to determine if felony charges are warranted.

Deputy County Attorney Dennis McGrane said his office hadn't had a chance to look over the letter by Thursday afternoon.

Despite retiring, former Lincoln County, N.M., Sheriff Tom Sullivan and former Capitan, N.M., Mayor Steve Sederwall are continuing their 3-year-old investigation into where Billy the Kid really is buried. History says it's in Fort Sumner, N.M., but the two men, now deputized as Lincoln County Sheriff's Office volunteers, want to prove it once and for all.

So last May they and others participated in an effort to dig up the body of John Miller at the Pioneers' Home Cemetery because Miller, who died at the Pioneers Home in 1937, claimed to be Billy the Kid.

They also dug up the bones from a neighboring grave, just in case that was Miller, since both graves are unmarked.

A Tucson man named Dave Snell brought the grave-digging incident to the attention of Polk in a March 11 letter. She originally referred the case to the city since the cemetery is inside the city limits.

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Pioneers Home Superintendent Gary Olson said he plans to send a letter to Sederwall asking for the return of the bones.

Pioneers Home authorities still are trying to determine whose bones the men took other than Miller's, Olson said.

Sullivan said he hopes to have DNA results from Miller's bones within a few months.

He then will compare that DNA with the DNA extracted from blood on a bench where Billy the Kid's body allegedly laid after Sheriff Pat Garrett shot him in Ft. Sumner on July 14, 1881.

Sullivan said they are looking into the theory that the Kid survived the shooting and lived to change his name to John Miller.

If those DNA samples don't match, Sullivan and Sederwall plan to move on to other bodies, such as that of Brushy Bill Roberts, a Texas man who claimed to be Billy the Kid.

Contact the reporter at jdodder@prescottaz.com

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